



Scale of Fee (SOF)

By:
Ir. Chen Thiam Leong
Member, SOF

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What is the purpose of the BEM SOF ?

- The SOF, similar to the REA is meant to **protect public interest**
- The original intent of the SOF was to avoid undercutting by the engineers, who may otherwise provide reduced / sub-standard service and thereby fail to **protect public interest**
- As such, the SOF is meant to be the **minimum scale** of fees

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BEM SOF Review Working Group



On 7th July 2020, BEM appointed 5 Working Group members for the Review of BEM Notification Scale of Fees 1998, with the following TOR;

1. Review the Scale of Fees 1998
2. Study the relevancy of the Scale in relation to Pekeliling Perbendaharaan 3.2 (Kos Perkhidmatan Perunding) and the recent court decisions
3. Study Scale of Fees for BIM services

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A Brief History of BEM SOF 1982 (REA 1967)



- Although the Registration of the Engineers Act (REA) 1967 was passed by Parliament in 1967, it was not implemented because the Act stated a minimum scale of fees to be established by the Board
- The cabinet wanted a maximum scale of fees be stated instead of the minimum
- Due to the impasse, the Government did not implement the REA until 1972 when there was shortage of engineers in the country and the cabinet asked the engineering profession how to solve the shortage of engineers

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A Brief History of BEM SOF 1982 (REA 1967) cont'd



- The offered solution was to implement the REA and invoke the clause on 2 years of compulsory service in Government departments for registration as P.Eng.
- The REA was then implemented in 1972!
- There was still the problem of the scale of fees which remained unresolved
- Meanwhile, the industry adopted the Scale of Fees based on the ACEM's scale which was derived from EC-UK

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A Brief History of BEM SOF 1982 (REA 1967) cont'd



- Finally, the proposal of a three scale of fees concept - Class I, Class II and Class III scales of fees was accepted and implemented
- That payment of fees for professional services should be commensurate with the input of the services rendered - was the principle that the Board accepted the different classes of scale of fees for professional services

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Next: A Brief History of the BEM SOF 1998



- The main revision in SOF 1998 was the replacement of the quantum of fees for Classes I, II and III, with a common range of fees within P(max) and P(min)
- This revision came about to obviate the then controversial interpretation to compute fee under different classifications for even a single engineering tender package, e.g. for a highway project, where fee for the road proper is computed under Class I while the roadside amenities – furniture, light fittings etc are under Class III.
- Incidentally, the 3 WG members who authored the BEM SOF 1998 are now also part of the 5 WG members for the current SOF Review.

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Review of SOF 1998 – General Issues



What are the various reasons leading to the need to review SOF 1998?

- The SOF is outdated as it was last revised more than 20 years ago?
- There is need for compliance with the Competition Act and having a SOF is not inline with worldwide trend?
- Due to recent court rulings?
- GoM is unhappy with the SOF?
- Public is unhappy with the SOF?
- Engineers are unhappy with the SOF?

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Review of SOF 1998 – General Issues cont'd



Approach - Revisit & Deliberate SOF's original objectives

- Which particular event triggered the birth of SOF?
- SOF is to protect public interest or otherwise?
- SOF was meant to be the minimum scale of fees, similar to that for BAM and BQSM?
- Is the SOF working well or otherwise over the years?
- Are recent court rulings in line with or out of line with the SOF?
 - taking cognizance that **BEM can only regulate the engineers and not the public**, which is similar to the LOR

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Review of SOF 1998 – General Issues cont'd



Should the SOF remain mandatory?

- Or should it be a Guideline?
- Or should we dispense with the SOF?
- What will be the consequence if there is no SOF?
 - citing the example of Medical SOF rethink?

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Review of SOF 1998 – General Issues cont'd



Stakeholders' consultation

- To have an initial discussion with BAM and BQSM on their views and action plan wrt their SOF since all 3 bodies are under the same ministry.
- Will BEM proceed independently to review the SOF should BAM and/or BQSM decide not to?
- To conduct roadshows for updated feedback from engineers (and other relevant stakeholders?)

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What about the BAM's SOF?



Board of Architects Malaysia

- BAM scale is a minimum scale as provided for in the Architects (Scale of **Minimum Fees**) Rules 1986 and was last amended in **2010**.
- Through a survey carried out by PAM, over 90% of the members want to retain the SOF.
- However, in the real market majority do not follow the scale but instead use it as a reference benchmark.
- BAM will maintain the SOF.

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What about the BQSM's SOF?



Board of Quantity Surveyors Malaysia

- BQSM's Scale of Fees does not mention it as a minimum scale although it was intended to be so.
- BQSM has never done any survey, but verbally their members in general want to retain the SOF.
- The SOF was last amended in **2014**.

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Other prevailing diverse views?



- The objective of the scale of fees set by the BEM is to put in check recalcitrant engineers who wittingly or unwittingly impose exorbitant fees
- The scale of fees is recommended fees and regulated in the sense of preventing overcharging
- There is no prohibition in the REA 1967 on the client from agreeing to a lower fee structure with the Engineer and there is no criminal sanction attached to either the client or the Engineer for non compliance where fees is concerned
- There is no clear and unambiguous provision in REA that no discount is allowed to be given

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Government's views



- Section 27 of the REA 1967 has specifically stated that –
“Nothing in this Act contained shall apply to anything done or omitted to be done by or under the authority of the Federal Government or the Government or State”
- Pekeliling 3.2 by the Perbendaharaan Malaysia (Kos Perkhidmatan Perunding) states that the BEM Scale of Fees serves only as a guideline and is not mandatory to be followed

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Developments todate & WG's views



- Until now, all 3 Boards (BEM, BAM, BQSM) have not received any complaint for not observing their respective SOF although the issue has been regularly raised by their members including during roadshows
- All 3 Boards desire to maintain the SOF as it will serve its purpose of at least for reference benchmarking
- Due to the various interpretations (including increasing construction costs), the Working Group agreed that there is a need to revise the Scale of Fees and to make it **mandatory and practical / workable**

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Draft Amendments to BEM SOF 1998



REGISTRATION OF ENGINEERS ACT 1967

NOTIFICATION OF SCALE OF FEES

IN exercise of the powers conferred by paragraph 4(1)(d) of the Registration of Engineers Act 1967 [Act 138], the Board of Engineers, with the approval of the Minister, fixes the following scale of fees to be charged by a consulting engineer for professional advice or services rendered. **These fees shall be the minimum to be charged.**

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Draft Amendments to BEM SOF 1998 cont'd



PROPOSED AMENDMENT	
1.	Subject to paragraph 2, every consulting engineer who is engaged by a client to perform any of the professional services described in Part A shall be paid charge in accordance with the scale of fees described in Part B in addition to the other payments described in Part C.
2.	Notwithstanding paragraph 1 and if the fees charged by the consulting engineer is being paid in accordance with sub-subparagraph 1(1)(a) of the scale of fees described in Part B, the scale of fees provided in Table A of sub-subparagraph 1(1)(e) of Part B shall not apply to buildings in housing development works.
3.	“builder’s work drawings” means the drawings prepared by the contractor for approval by the consulting engineer which show details of work of a related to a structural nature which is required to be carried out by a builder or other party to facilitate the execution of the engineering systems in the buildings;
	“consulting engineer” means any Professional Engineer or body corporate, partnership or sole proprietorship practising as consulting engineers engaged by the client to provide professional services; a Professional Engineer with Practising Certificate or an Engineering Consultancy Practice as defined in the Registration of Engineers Act;

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Draft Amendments to BEM SOF 1998 cont'd



PROPOSED AMENDMENT	
3.	<p>"building cost" or "total construction cost" means –</p> <p>a) <u>the cost of the building works, however incurred, including any payments (before deduction of any liquidated damages or penalties payable by the contractor to the client) made by the client to the contractor by way of bonus, incentive or ex-gratia payments or payments made in settlement of claims;</u></p> <p>b) <u>a fair valuation of any labour, materials, manufactured goods, machinery or other facilities provided by the client, and of the full benefit accruing to the contractor from the use of construction plant and equipment belonging to the client which the client has required to be used in the construction of the building works;</u></p> <p>c) <u>the market value, as if purchased new, of any second-hand materials, manufactured goods and machinery incorporated in the building works;</u></p> <p>d) <u>the cost of geotechnical and other investigations; and (e) the apportioned preliminary cost, but shall not include –</u></p> <p>(aa) administration expenses incurred by the client; (bb) costs incurred; (cc); (dd).....; (ee).....</p>

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Draft Amendments to BEM SOF 1998 cont'd



PROPOSED AMENDMENT	
3.	Supervision On Site
(2)	If in the opinion of the consulting engineer the nature of the work including the carrying out of any geotechnical and other investigations, topographic survey, and tests warrants full-time or part-time supervision <u>by registered Inspector-of-Works (IOW)</u> on site in addition to the site visits made by the consulting engineer under sub-sub-subparagraphs 1(1)(d)(vii), 1(2)(d)(viii) and 1(3)(d)(v) of this Part, whichever is applicable, he shall advise the client of the fact and also the desired qualification and experience which <u>the site staff IOW</u> shall possess.
(3)	All <u>site staff IOW</u> shall be under the control of, and take instructions from, the consulting engineer only.

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Draft Amendments to BEM SOF 1998 cont'd



PROPOSED AMENDMENT			
1.	Scale Of Fees For Basic Professional Services		
Total Cost Of Components Of The Works In The Respective Type in RM	[P(max)] P(upper)	[P(min)] P(lower)	To avoid confusion between P(max) and P(min) with Minimum Scale of Fee
100,000 & below	10.00%	8.25%	Review of fee scale pending stakeholders' feedback. This will include consideration of alternative fee scale based on Building Cost or Total Construction Cost, to address complaints that the more the consultant do, the less he gets paid
250,000	8.65%	7.45%	
500,000	7.60%	6.85%	
1,000,000	6.80%	6.30%	
2,500,000	6.00%	5.65%	
5,000,000	5.50%	5.20%	
10,000,000	5.00%	4.75%	
1,000,000,000 & above	2.54%	2.28%	

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Draft Amendments to BEM SOF 1998 cont'd



PROPOSED AMENDMENT	
PART C	
OTHER PAYMENTS	
1.	Payment For Use Of Computer Or Other Special Equipment To remove this payment as such equipment are normal consultant's tools, or re-word to clearly demarcate use of Autocad, IBS and BIM – to await recommendation from Special Working Group for BIM.

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BIM



- The 3 Boards, PAM and ACEM agree that BIM is the future and we have to move forward progressively
- There is a consensus to set up a special Working Group asap comprising representatives from the 3 Boards, PAM and ACEM to –
 - a) define the minimum level/requirement of BIM to be included as part of the basic professional services;
 - b) define the progressive advanced levels of scope of services for BIM to be classified/categorised as additional services and thence, with additional fees.

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ENGINEERS' FEEDBACK ACCEPTED FOR ADOPTION TODATE

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PROPOSED AMENDMENT	
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- | | |
|----|--|
| 3. | "building cost" or "total construction cost" means – |
|----|--|



ACEM:

Add: (ff) the cost of contribution fees for utility work.

"engineering system" means all mechanical and electrical services ... below:
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IEM:

(q) - The pumping installation system within the building

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- | | | |
|----|-----|--|
| 1. | (2) | Basic Professional Services <u>for Type B works</u> (structural engineering works in buildings) of more than four storeys high |
| 1. | (3) | Basic Professional Services <u>for Type C works</u> (engineering systems in buildings) of more than four storeys high |



ACEM:

To omit the description and definition of "four storeys high"

"single location" for the purpose of this Notification, means the same housing development area developed or to be developed by the same housing developer in the same vicinity;
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IEM:

- Suggest "within the site" instead of "in the same vicinity".

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ENGINEERS' FEEDBACK UNDER CONSIDERATION

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PART A

PROFESSIONAL FEES

2.(1)	Additional Professional Services Not Included In Basic Services for Type A
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ACEM:

- Scaffolding and falseworks as requested by Client
- IBS system (as alternative design)
- BIM manager / coordinator
- Attending to court hearing during arbitration
- TIA, hydrological studies, coastal hydraulics studies, Structural integrity studies for existing structures, Marine Traffic Risk Assessment (MTRA)
- Preparing Shop drawing and As Built Drawings

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PART A	
PROFESSIONAL FEES	
2.(3)	Additional Professional Services Not Included In Basic Services for Type C

ACEM:

- Liaise with authorities on the designs of the external electrical services that are not covered by the electricity provider / authority (eg. Sabah Context, Sabah Electricity Sdn Bhd, SESB) in the contribution costs.

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PROPOSED AMENDMENT	
1.	Scale Of Fees For Basic Professional Services

ACEM:

- To abolish and omit P(max) and P(min) system in SOF and adopt a single value fees for different category / Type of Works (i.e. Type A Works, Type B Works, Type C Works)
- The computation of the fees shall be based on **TOTAL AWARDED CONSTRUCTION COST**

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(a)	Preliminary Stage
(vii)	preparing such reports and documents as are reasonably necessary to enable the client to consider the consulting engineer's proposals,

IEM:

- Please consider the limit of the number of alternative proposals to be “reasonably” carried out as there are genuine cases whereby proposals after proposals were requested, ending up prolonging the “progress” and resulted in numerous abortive works.

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(d)	Construction Stage
(v)	preparing any further designs and drawings relating to the works;

IEM:

- (v) - To consider that further design shall not refer to “as an” alternative proposal

(d)	Construction Stage
(iii)	providing the contractor with such further information as are necessary, in the opinion of the consulting engineer, to enable the (installation) shop drawings to be prepared;

IEM:

- providing the contractor with such further information as are necessary, in the opinion of the consulting engineer, to enable the **shop drawings to be prepared and prepare simulated computer aided works;**

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IEM Additional suggestions:



- To consider improving Definition Section to expand & update latest technologies & terminologies into existing phrase & term
- Stages of Payment of Fees is the same regardless Type A, B or C Works - suggest to just state as Stages of Payment of Fees, without explicitly stating the Type
- The C&S consultant fees (including variation of works instructed by the government) should be based on the actual final construction cost not on FIXED CONSULTANT FEE or initial estimated construction cost as what outlined in the MOF letter Pekeliling Perbendaharaan Malaysia PK 2.3 dated 11 March 2016

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BOARD OF ENGINEERS MALAYSIA
 Tingkat 11 & 17, Blok F Ibu Pejabat JKR
 Jalan Sultan Salahuddin, 50580 Kuala Lumpur, Malaysia
<http://www.bem.org.my>
enquiry@bem.org.my or complaint@bem.org.my
 Tel: 03-26912090; 03-26107095/96 Fax: 03-26925017

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